

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Saavedra	Team: Squad #1	CCRB Case #: 201907077	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 08/03/2019 3:29 PM	Location of Incident: [REDACTED]	Precinct: 44	18 Mo. SOL 2/3/2021	EO SOL 9/20/2021	
Date/Time CV Reported Sat, 08/03/2019 5:36 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/09/2019 11:07 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POF Alexandra Michaels	13169	953107	044 PCT
2. POM William Garner	20756	951760	044 PCT
3. POM Calvin Black	01730	948676	044 PCT
4. SGT Harry Delacruz	00580	941272	044 PCT

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(b) SGT Harry Delacruz	Abuse: At § 87(2)(b) [REDACTED] in the Bronx, Sergeant Harry Delacruz forcibly removed § 87(2)(b) [REDACTED] to the hospital.	[REDACTED]
B.POF Alexandra Michaels	Force: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer Alexandra Michaels used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM William Garner	Force: At § 87(2)(b) [REDACTED] in the Bronx, Police Officer William Garner used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM William Garner	Off. Language: At § 87(2)(b) [REDACTED] Hospital, Police Officer William Garner made remarks to § 87(2)(b) [REDACTED] based upon the perceived mental disability of § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On August 3, 2019, § 87(2)(b) filed this complaint on behalf of her mother, § 87(2)(b) over the phone with IAB. On August 9, 2019, it was received at the CCRB.

On August 3, 2019, Sgt. Harry Delacruz, and Police Officers Calvin Black, William Gardner, and, Alexandra Michaels, of the 44th Precinct, responded to a 911 call at § 87(2)(b) in the Bronx. Sgt. Delacruz instructed officers to remove § 87(2)(b) to the hospital (**Allegation A: Abuse of Authority:** § 87(2)(g) PO Michaels and PO Gardner used physical force when placing and removing § 87(2)(b) from the police van for transport to § 87(2)(b) Hospital (**Allegation B and C: Force:** § 87(2)(g) While inside § 87(2)(b) Hospital, PO Gardner called § 87(2)(b) “crazy” (**Allegation D:** § 87(2)(b) § 87(2)(g) § 87(4-b), § 87(2)(g)

Body-worn camera (BWC) videos were obtained for this case and captured part of the incident (Board Reviews 01-07).

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Sergeant Harry Delacruz forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) a Spanish speaker, provided very brief phone statements on August 15 and August 30, 2019. On August 15, 2019, she stated that she did not recall the majority of the incident because she purposely spaced out from the trauma and her sister, § 87(2)(b) told her what happened. On August 30, 2019, § 87(2)(b) again stated that she did not recall the specifics of the incident but explained it was because she had lost consciousness, and again stated that § 87(2)(b) had filled in the blanks for her. After several delays, § 87(2)(b) was interviewed on February 10, 2020 in the presence of her civil attorney (Board Reviews 08, 18, and 20).

§ 87(2)(b) testified that, on August 3, 2019, she called 911 because two individuals threw water on her and stole her keys. Officers responded and took her to the stationhouse where she filed a criminal complaint about the incident. After she left the stationhouse, she saw one of the perpetrators and called 911 several times over the course of 25 minutes. She then waited outside § 87(2)(b)'s home at § 87(2)(b). An officer arrived and told § 87(2)(b) in Spanish, to get inside a police van. § 87(2)(b) asked officers why they were asking her to get in a van, as she had called the police for assistance, and whether she was being arrested. Officers did not answer her questions. Officers placed § 87(2)(b) into the van, and § 87(2)(b) also got into the van with her. Officers then took her to a hospital at § 87(2)(b). On the advice of her attorney, § 87(2)(b) refused to sign a HIPAA release form.

§ 87(2)(b) was uncooperative in providing a statement regarding this incident.

PO Garner testified that on August 3, 2019, earlier in the day, PO Garner and PO Michaels responded to a call for an assault/robbery. They arrived at § 87(2)(b) and § 87(2)(b) was screaming and “highly upset.” PO Garner and PO Michaels could not understand what she was saying because she was yelling and spoke only Spanish, and neither PO Garner nor PO Michaels spoke Spanish. PO Garner asked to speak to her niece who was the on the phone with her and who spoke English and Spanish. PO Garner and PO Michaels then decided to bring § 87(2)(b) to the stationhouse for her to make a complaint, as several people were gathering around her. They drove her to the 44th Precinct where two detectives from the 44th Precinct, whose identities he did not recall, interviewed her and stated that they would go to the location to retrieve video footage. PO Michaels and PO Garner resumed patrol. At approximately 3:20pm, they received another call to return to § 87(2)(b). They arrived and observed § 87(2)(b) screaming and causing a crowd of 20 to 30 people to form. The same two detectives who took § 87(2)(b)'s complaint were on scene and told PO Garner and PO Michaels that they determined that what § 87(2)(b) had originally alleged had not occurred. PO Garner spoke to approximately 2 to

3 civilians on scene, who told him that § 87(2)(b) was not telling the truth, and that she had “mental problems.” Sgt. Harry Delacruz was also on scene, spoke to § 87(2)(b) and determined that she was emotionally disturbed and needed to go to the hospital. PO Garner’s memo book similarly documented that the patrol supervisor instructed him to EDP § 87(2)(b) (Board Review 21). PO Garner stated that, at the time, an ambulance would have taken a long time to arrive, so the officers took § 87(2)(b) to the hospital in their van. PO Garner did not recall her complaining of any injuries at this point, or during the ride to the hospital, but recalled her niece saying that § 87(2)(b) was asthmatic. Prior to getting inside the van, officers placed handcuffs on § 87(2)(b) for their own safety, though PO Garner did not recall which officer(s) did this. PO Garner did not recall § 87(2)(b) resisting. PO Garner and PO Michaels placed her in the van and drove her to § 87(2)(b) Hospital (Board Review 11).

PO Michaels’ testimony was largely consistent with that of PO Garner. She stated that, when she and PO Garner responded the first time, she thought that § 87(2)(b) might be an emotionally disturbed person but also believed that a crime might have occurred which is why they brought her to the stationhouse. When they returned to § 87(2)(b) they spoke to some detectives on scene who said that they reviewed surveillance footage and determined that § 87(2)(b) was an emotionally disturbed person. § 87(2)(b) was screaming, flailing her arms, and falling on the floor. PO Michaels did not understand most of what she was saying because PO Michaels did not speak Spanish. PO Michaels believed that § 87(2)(b) was taken to the hospital due to her behavior. A call was made for an ambulance but due to an extensive EMS call backlog, the officers drove her to the hospital themselves (Board Review 12).

§ 87(2)(b), § 87(2)(e)

BWC footage from PO Michaels, captured during the second time they responded to the scene, opens with § 87(2)(b) standing with her back facing the open doors of the police van and speaking to a sergeant who is standing in front of her (see screenshots in Board Review 23 that confirms rank but view of face is limited – though looks like Sgt. Delacruz - and name/shield are not visible) as well as gesturing with her hands, during the 30 second period prior to the activation of the BWC’s audio recording. PO Garner is standing to her right and PO Michaels to her left. No specific discussion of § 87(2)(b)’s removal to the hospital can be heard. Once the audio begins, PO § 87(2)(b) and PO Michaels place § 87(2)(b) in the van. § 87(2)(b) can be heard yelling “let them kill me, I’m not crazy,” and, “let them kill me, I’m not crazy,” as well as repeated variations thereof. § 87(2)(b) also says in Spanish that she has asthma. PO Michaels repeatedly tells § 87(2)(b) to get up, as she falls to the floor of the van while entering it. While PO Michaels assists § 87(2)(b) inside the van, two uniformed males can be seen out the window speaking with two white or light skinned adult males in long sleeved white shirts with ties (see final screenshot in Board Review 23). As PO Michaels exits the van and walks around to the driver’s side, two female civilians, in addition to § 87(2)(b) are standing next to the van and two males are standing on the sidewalk on the other side of the street watching, but not saying anything (Board Review 04).

Neither Sgt. Delacruz nor PO Calvin Black (who has since been promoted to sergeant), of the 44th Precinct, independently recalled this incident. Neither recorded their own body camera video and did not recall anything about the incident after being shown related BWC footage (Board Reviews 09 and 10). The ISAR lists Sgt. Delacruz as on scene (Board Review 17). Per his current command (42nd Precinct) Sgt. Delacruz was unable to locate his memo book for the incident date after an exhaustive search (Board Review 24).

Officers are required to take into protective custody any civilian they determine to be emotionally disturbed, when they are acting in a manner that could result in serious injury to themselves or others, NYPD Patrol Guide 221-13 (Board Review 13).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: At § 87(2)(b) in the Bronx, Police Officer Alexandra Michaels used physical force against § 87(2)(b)

Allegation (C) Force: At § 87(2)(b) in the Bronx, Police Officer William Garner used physical force against § 87(2)(b)

During her February 10, 2020 interview, § 87(2)(b) testified that PO Michaels grabbed her right arm from behind and handcuffed her. § 87(2)(b) told officers not to hit her, as she suffered from “emotional asthma.” PO Michaels and PO Garner then grabbed § 87(2)(b) by each arm and lifted her into the van, causing her to hit the back of her head twice on the doorframe of the van. When they arrived at the hospital, PO Michaels and PO Garner grabbed § 87(2)(b) to get her out of the van, which caused her to again hit her head twice on the doorframe of the van. This caused her to faint briefly. PO Garner then grabbed her by the back of her pants, which caused a cut to her crotch area. § 87(2)(b) did not provide further information about this injury. PO Garner then brought § 87(2)(b) to the hospital along with § 87(2)(b) (Board Review 08).

§ 87(2)(b), § 87(2)(g)

The ISAR report prepared with regard to this incident, revealed that, while at the hospital § 87(2)(b) complained that officers punched her in the head and back, and shoved her into a van. It also noted that she sustained contusions to her head and right shoulder (Board Review 17). In her brief phone statement on August 15, 2019, § 87(2)(b) stated that an officer hit her breast and forced her to go to the hospital like an animal. She did not clarify which officer hit her or how they did so (Board Review 18). On August 30, 2019, § 87(2)(b) left a voicemail message for the investigator, and stated that, during this incident, officers “mistreated” her breasts and forced her into an ambulance (Board Review 19). As previously noted, in both of those phone calls, § 87(2)(b) stated that she did not remember much of the incident and obtained information about it from § 87(2)(b).

BWC footage from PO Michaels opens with PO Garner with both hands on § 87(2)(b)'s upper arms, while she steps, handcuffed, into the van. As she enters, § 87(2)(b) yells, § 87(2)(b) talk to the white shirt," and, "let them kill me, I'm not crazy, " several times. § 87(2)(b) then sits on the second-to-last row of seats in the van. § 87(2)(b) is not shown hitting her head, nor can she be heard complaining about her head at any point, though her head cannot be seen the entire time while entering the van. PO Michaels repeatedly tells her to sit in the back row, and § 87(2)(b) does not move, but yells in Spanish “This is discrimination, I am not crazy.” § 87(2)(b) then, without any action from PO Michaels, falls on the floor of the van, and PO Michaels tells her to get up approximately five times. PO Michaels grabs § 87(2)(b)'s right upper arm, then her left, and appears to lift § 87(2)(b) while the latter continues to yell. Shortly thereafter, § 87(2)(b) sits down without assistance or any contact with PO Michaels, on the back seat of the van. The footage then shows PO Michaels walk around to the driver's seat and drive to the hospital (Board Review 04).

When PO Garner's footage opens, § 87(2)(b) is already in the van and § 87(2)(b) enters the van shortly thereafter. Once in the van, § 87(2)(b) says that § 87(2)(b) suffers from asthma,

while § 87(2)(b) repeatedly says, in Spanish, that she needs air. PO Garner tells both that they are going to the hospital. § 87(2)(b) then asks PO Garner to open a window. PO Garner says he is unable to open a window and again tells § 87(2)(b) that they are going to the hospital and that he cannot administer any kind of medical aid. § 87(2)(b) reaches into § 87(2)(b)'s bag, and asks her in Spanish, "where do you have it?" PO Garner tells § 87(2)(b) that she cannot give § 87(2)(b) anything. At approximately 02:20, the van stops, PO Garner exits, and § 87(2)(b) exits. At 02:45, § 87(2)(b) stands inside the van at the doorway, facing inside the van. PO Garner says, "I got you. I got you. Come on. Come on" as he reaches forward toward her arm. § 87(2)(b) stands on the ground on PO Garner's right side. PO Garner then says, "What's she doing?" § 87(2)(b) responds, "What's she doing? I told you she doesn't feel good." The body worn camera is too close to see § 87(2)(b)'s body position as she exits the van. § 87(2)(b) makes no allegation that any officer struck § 87(2)(b) (Board Review 07).

Per PO Michaels' footage, when they arrive at the hospital at 03:55, PO Michaels walks around from the driver's seat to the passenger's side of the van. § 87(2)(b) reaches toward the back seat and holds § 87(2)(b)'s arms as she stands up. PO Garner takes over when § 87(2)(b) exits the van and is seen holding § 87(2)(b)'s right upper arm with his left hand as she stands inside the van and in the open doorway, facing into the van. The camera pans to the right toward § 87(2)(b) and § 87(2)(b) goes out of view. § 87(2)(b) says, in Spanish, "I don't want that (female) officer to touch me," in reference to PO Michaels. PO Garner says, "I got you." PO Michaels tells § 87(2)(b) to check § 87(2)(b) into the hospital. § 87(2)(b) then reaches out toward § 87(2)(b) (while the camera also pans back toward § 87(2)(b) and grabs her right arm while § 87(2)(b) is still standing in the van and at the doorway. PO Garner is seen holding § 87(2)(b) by both arms. § 87(2)(b) exits the van but because the camera pans back and forth, her whole body is not fully captured as she exits. PO Michaels does not assist in removing § 87(2)(b) from the van. Just after § 87(2)(b) exits the van, § 87(2)(b) leans and reaches forward, § 87(2)(b) is not visible, and says, "Oh my god; What's she doing now? I tell you she's not feeling good." At approximately 04:40, § 87(2)(b) can briefly be seen leaning her head on § 87(2)(b)'s chest with her eyes closed. PO Michaels then asks § 87(2)(b) whether § 87(2)(b) has a history of illness, to which § 87(2)(b) replies that she has asthma. PO Michaels then says, "hold on," and walks toward the entrance of the hospital. PO Michaels' footage then concludes (Board Review 04).

Beginning at approximately the 03:00, PO Garner's BWC footage shows PO Michaels walking towards and into the hospital. PO Garner faces the hospital and neither § 87(2)(b) or § 87(2)(b) are visible. § 87(2)(b) says, "How you going to hold her like that? She can't walk. You don't understand that?" PO Garner tells § 87(2)(b) to calm down, several times in Spanish, and then he, § 87(2)(b) and § 87(2)(b) walk to the hospital. § 87(2)(b) seems to collapse shortly before getting to the hospital doors and PO Michaels returns and assists PO Garner and they walk into the hospital. A member of the hospital staff offscreen asks § 87(2)(b) in Spanish, "can you not breathe, what's wrong?" to which § 87(2)(b) replies by yelling three times in Spanish, "the [female] police officer hit my breast" (§ 87(2)(b) uses the female pronoun "la" when saying "the officer")." Shortly thereafter, this footage concludes (Board Review 07).

PO Garner did not recall any struggle to place § 87(2)(b) into the van. PO Garner stated that when they arrived at the hospital and upon exiting the van, § 87(2)(b) went limp for approximately a minute, dropping down to the floor while PO Garner attempted to help her up by grabbing her under her armpits. PO Michaels walked over to the hospital to get a stretcher for § 87(2)(b). When PO Michaels reached the entrance of the hospital, § 87(2)(b) rose to her feet and walked towards the hospital. The officers walked with her to the hospital entrance, after which hospital staff placed her on a gurney, and PO Garner and PO Michaels immediately removed her handcuffs. PO Garner did not know what treatment, if any, she received while there. Upon being shown BWC footage, PO Garner stated that, while it showed some physical struggle between PO Michaels and § 87(2)(b) while she placed § 87(2)(b) into the van, beginning at 00:35, he

remained outside the van and did not see what happened at the time. He did not recall § 87(2)(b) resisting being placed into the van. PO Garner did not recall anything further about the span of time during which § 87(2)(b) was brought from the van to the hospital (Board Review 11).

§ 87(2)(g). PO Michaels stated that, after the decision was made to take § 87(2)(b) to the hospital, and before entering the van, § 87(2)(b) fell on the floor and flailed, and through § 87(2)(b)'s interpretation, said that she needed an asthma pump. A struggle ensued and an officer, PO Michaels could not recall who, placed § 87(2)(b) in handcuffs. PO Michaels stated that she had her hands on § 87(2)(b) at this time in order to help her into the van. Upon arriving at the hospital, PO Michaels stated that § 87(2)(b) fell to the floor again, though she did not recall her doing anything else physically at this time. PO Michaels did not recall § 87(2)(b) hitting her head or complaining about her head at any point during this incident (Board Review 12).

Officers may use force on an individual when it is necessary to ensure the safety of all present, and when doing so, are required to apply no more than the reasonable force necessary to gain control of an individual, NYPD Patrol Guide 221-02 (Board Review 14).

§ 87(2)(b), § 87(2)(g)

Allegation (D) Offensive Language: At § 87(2)(b) Hospital, Police Officer William Garner made remarks to § 87(2)(b) based upon the perceived mental disability of § 87(2)(b)

In her February 10, 2020 statement, § 87(2)(b) testified that, once inside the hospital, PO Gardner told several staff that § 87(2)(b) was “crazy” in English. Medical staff gave her a muscle relaxant and offered her other unspecified medication, which she refused, as she did not like to take pills (Board Review 08).

Both PO Gardner and PO Michaels denied calling § 87(2)(b) “crazy,” making any comments regarding her mental health, or hearing each other do so while inside the hospital (Board Reviews 11 and 12).

BWC footage from both PO Gardner and PO Michaels concludes as or shortly after the officers enter the hospital with § 87(2)(b) and did not capture the alleged comment (Board Reviews 04 and 07).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Sgt. Delacruz has been a member-of-service for 14 years and has been a subject in 13 other CCRB complaints and 29 allegations, none of which were substantiated. Sgt. Delacruz's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Michaels has been a member-of-service for eight years and has been a subject in seven other CCRB complaints and 14 allegations, none of which were substantiated. PO Michaels' CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Gardner has been a member-of-service for eight years and has been a subject in two other CCRB complaints and three allegations, none of which were substantiated. PO Gardner's CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming false arrest, false imprisonment, negligent hiring, negligent training, negligent supervision and malicious prosecution and violation of civil rights and seeking \$1,000,000 as redress. A 50H hearing was held on May 22, 2020 and has been requested from the New York City Comptroller's Office. The results of that hearing will be added to the case file upon receipt.

§ 87(2)(b)

Squad No.: 1

Investigator: Inv. Saavedra 6/9/2021
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda 6.14.21

CCRB Case # 201907077

Signature

Print Title & Name

Date